

EXHIBIT 6

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF MASSACHUSETTS
4

5 In Re: CREDIT SUISSE-AOL
6 SECURITIES LITIGATION

Master File No. 1:02 **cv**12146

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8 This Document Relates To:
9 ALL ACTIONS
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13 VIDEOTAPED DEPOSITION
14 OF
15 SCOTT D. HAKALA
16 New York, New York
17 Tuesday, July 10, 2007
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22
23

24 Reported by:
ANNETTE ARLEQUIN, CCR, RPR
25 JOB NO. 11862

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July 10, 2007

9:38 a.m.

Videotaped deposition of SCOTT D. HAKALA, held at the offices of DAVIS, POLK & WARDWELL, 450 Lexington Avenue, New York, New York, pursuant to Notice before Annette Arlequin, a Certified Court Reporter, a Registered Professional Reporter and Notary Public of the State of New York.

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MICHAEL PINEIRO, Legal Video Specialist
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IT IS HEREBY STIPULATED AND AGREED by
and between the attorneys for the
respective parties herein, that filing and
sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form
of the question, shall be reserved to the
time of the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be sworn to
and signed before any officer authorized to
administer an oath, with the same force and
effect as if signed and sworn to before the
Court.

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* Proceedings *

THE VIDEOGRAPHER: This is the tape labeled No. 1 of the video deposition of Dr. Scott Hakala in the matter of In Re Credit Suisse AOL Securities Litigation. This deposition is being held at 450 Lexington Avenue, New York, New York on July 10, 2007 at approximately 9:38.

My name is Michael Pineiro from TSG Reporting, Inc. and I am the legal video specialist.

The court reporter is Annette Arlequin in association with TSG Reporting.

Will counsel please introduce yourself.

MR. GESSER: Avi Gesser from Davis Polk & Wardwell for the Credit Suisse defendants.

MR. SCHWARTZ: Daniel Schwartz, Davis Polk & Wardwell, also for the Credit Suisse defendants.

MR. RUDMAN: Jeff Rudman, WilmerHale, for Frank Quattrone.

MR. MILLER: Jared Miller, WilmerHale, also for Mr. Quattrone.

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* Proceedings *

MS. FREDERICK: Dharma Frederick, Davis Polk, for the Credit Suisse defendants.

MR. HALL: Donny Hall, Kaplan Fox & Kilsheimer on behalf of Bricklayers and the class and on behalf of Dr. Hakala.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

* * *

SCOTT D. HAKALA, called as a witness, having been duly sworn by the Notary Public, testified as follows:

EXAMINATION BY

MR. GESSER:

Q. Dr. Hakala, you've been deposed before?

A. Yes.

Q. How many times?

A. Over 100 now.

Q. Okay. So you're familiar with the ground rules?

A. Yes.

Q. Okay. My job is to ask questions and your job is to answer them as best as you can;

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is that correct?

A. Yes.

Q. And have you -- is there any reason why you can't give accurate and complete testimony today; any medications you're taking or anything like that?

A. No.

Q. All right. What did you do to prepare for your deposition today?

A. I reviewed my report, both my original report and then my rebuttal report.

I reviewed the report of Professor Stulzman -- Stulz. I reviewed the deposition of Professor Stulz and then I read the complaint.

Then I met with Donny Hall for about two hours total. Maybe a little less than.

Q. When did you meet with Mr. Hall?

A. Yesterday.

Q. Was anyone else present?

A. No.

Q. And did you meet -- did you have any phone conversations with Mr. Hall regarding your preparation?

A. Briefly, yes.

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Q. About how many times?

A. Once or twice, maybe more, but mostly just scheduling kinds of things.

Q. Okay. Where are you currently living?

A. I'm living in Highland Village, Texas.

Q. If you could take me through your educational background.

You have a BA in economics?

A. I have a BA in economics with a minor in business and a pre-law emphasis in polysci, and then I have a Ph.D., and I earned that in 1983, I earned a Ph.D. or doctorate in economics in 1989.

Q. From where?

A. From the University of Minnesota.

Both of the degrees are from the University of Minnesota but the undergraduate degree is from the Duluth campus.

Q. Okay. And did you -- you had a prelaw emphasis?

A. Yes.

Q. Did you intend to go to law school?

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1 **S. Hakala**

2 A. I was -- at that point I was
3 reserving my options to either go to graduate
4 school in economics or law school, and for a
5 variety of personal reasons thought law school
6 was not a good fit for me.

7 **Q. And so you never attended law school.**

8 A. No.

9 **Q. And did you go straight from your
10 undergraduate into your Ph.D. program?**

11 A. Yes.

12 **Q. And your resumé says that your
13 advisor was Edward Prescott; is that correct?**

14 A. Yes, that's correct.

15 **Q. And he was awarded a Nobel Prize in
16 economics in 2004?**

17 A. Yes.

18 **Q. Did you in any way assist him or
19 contribute to any of the work that resulted in
20 the Nobel Prize?**

21 A. No.

22 **Q. What was the subject of your Ph.D.
23 dissertation?**

24 A. It was on -- the title was "Inventory
25 Theoretic Models of Money." Essentially what I

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2 was doing was from the ground up trying to
3 explain how and why money develops in an economy
4 and then from that, develop some mathematical
5 models for using a more sophisticated,
6 continuous time modeling technique to see if
7 modeling the theory of money from the ground up
8 of why does money exist, how does it exist and
9 then how often does one in a sense get paid,
10 what's the timing between pay intervals and sort
11 of inventory holdings of money balances, how
12 does that relate to things like hyperinflation,
13 interest rates and economic activity.

14 **Q. Was that thesis published anywhere?**

15 A. The paper was part of a working
16 series or was a present -- was accepted through
17 peer review for the World Econometric Society
18 meetings, but that did not count as a
19 publication.

20 **Q. And was that -- was your thesis
21 related to securities analysts in any way?**

22 A. No.

23 **Q. As part of your academic training,
24 did you receive any formal instruction or do any
25 research on research analysts?**

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2 A. Not then, no.

3 **Q. If you could take me briefly through
4 your employment history.**

5 **In 1983 you began lecturing in the
6 Department of Economics at the University of
7 Minnesota; is that correct?**

8 A. Yes.

9 **Q. Okay. How long did you do that for?**

10 A. I did that until 1987.

11 **Q. Okay. Did you teach any courses
12 during that time?**

13 A. Yes.

14 **Q. And what courses did you teach?**

15 A. My primary course was the Principles
16 of Macroeconomics lecture.

17 I was, because of my training and
18 background, I was given the responsibility, the
19 first year I was really the associate so I
20 taught some of the breakout groups, but the
21 second year I was promoted to being the large
22 lecturer, which meant that I had about 450
23 students a quarter that were broken down in
24 about 10, 11 different subsections with other
25 graduate students as what I call TAs grading

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2 papers and other things.

3 So I was the primary lecturer in
4 designing the course, designing the course
5 materials. I would give two lectures a week and
6 Robert Heller, who very famous economist, would
7 give essentially a one lecture a week.

8 **Q. And then you were promoted to
9 assistant professor; is that correct?**

10 A. I wasn't promoted. That was my first
11 employment after I received my Ph.D.

12 **Q. I see. Okay.**

13 **And that was in the economics
14 department at Southern Methodist University?**

15 A. Yes.

16 **Q. And how long did you -- were you an
17 assistant professor there?**

18 A. Four years.

19 **Q. And what courses did you teach?**

20 A. I taught the Ph.D. level Monetary and
21 Financial Theory course.

22 I taught the Principles of
23 Macroeconomics course.

24 Occasionally Money and Banking.

25 I also taught a course on

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 2 international finance that generally was
 3 targeted to senior undergraduates and students
 4 in an applied master's program.
 5 **Q. Did you publish any peer-reviewed**
 6 **articles during this time?**
 7 A. No.
 8 **Q. Did you seek tenure as a professor at**
 9 **Southern Methodist?**
 10 A. No.
 11 **Q. When did you leave Southern Methodist**
 12 **University?**
 13 A. I think formally July of 1992.
 14 **Q. Why did you leave?**
 15 A. I left because I was very frustrated
 16 with the academic process and the level of
 17 research support at SMU.
 18 I also left with a year left on my
 19 contract at SMU because I felt that consulting
 20 would be a better fit, would give more
 21 flexibility both financially and personally for
 22 me.
 23 **Q. So what did you do after you left**
 24 **Southern Methodist University?**
 25 A. I actually had an overlap in May of
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 2 1992. I was formally employed by a firm known
 3 as Business Valuation Services, which is really
 4 the predecessor of the firm I now work for.
 5 **Q. And how long did you work for**
 6 **Business Valuation Services?**
 7 A. Until it was acquired in May of 1998
 8 with maybe a two-month window.
 9 **Q. And what did you do for them?**
 10 A. I was hired as an economist, as a
 11 senior consultant, and eventually I was promoted
 12 to a principal.
 13 I helped oversee employment issues,
 14 any kind of work that was required to be done,
 15 interacting with clients. Just a pretty broad
 16 mix. At that time we were doing a lot of
 17 valuation work so day in and day out most of the
 18 work I was doing was interacting with clients
 19 who needed valuations for a variety of purposes.
 20 **Q. When you say "clients," these are**
 21 **corporations you were valuing?**
 22 A. Corporations or families' estates.
 23 We were doing a lot of estate planning work with
 24 attorneys or corporations that needed like an
 25 allocation of purchase price study or a transfer
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 2 pricing study or some other valuation assignment
 3 that would be used for some accounting or tax
 4 purpose.
 5 **Q. And why did you leave Business**
 6 **Valuation Services in 1998?**
 7 A. I only left for two months and only
 8 as an interim to try and assist a company to try
 9 and raise capital and to provide sort of an
 10 interim position as a bridge. Other than that,
 11 I never left the firm.
 12 **Q. Okay. Did you work for Laser**
 13 **Biotherapy?**
 14 A. Yes, but only two months.
 15 **Q. Okay. And what did you do for them?**
 16 **Is that the company that you were**
 17 **just referring to?**
 18 A. Yes. Yeah.
 19 **Q. And what did you do for Laser**
 20 **Biotherapy?**
 21 A. I was the president and CEO.
 22 I was also really the controller and
 23 CFO.
 24 I had originally done a lot
 25 consulting work in preparing business plans
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 2 projections. Essentially I completely redid the
 3 financials from the ground up, reconstructed the
 4 financial statements.
 5 I interacted with physicians who
 6 were -- we had a double blind study at the Mayo
 7 Clinic in Rochester, Minnesota, so I met up and
 8 met with him, reviewed his work, made sure the
 9 statistics were done right.
 10 I had a limited amount of oversight
 11 on our seeking FDA approval for the device we
 12 were manufacturing, met with perspective
 13 manufacturers, vendors and other doctors where
 14 we had demonstration units.
 15 **Q. And why was your term at Laser**
 16 **Biotherapy only three months?**
 17 A. Well, it was really two months.
 18 But once I got in, first of all, some
 19 of the initial seed money that was promised we
 20 would have to work with didn't show up, so it
 21 was very frustrating to work without money.
 22 Second, I think sometimes you get
 23 into something that looks great and you get
 24 along with someone really well and then when
 25 you're working with them day in and day out and
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2 you're making decisions, it's a different
3 matter.

4 And when you're president and CEO and
5 a fiduciary and you're trying to raise money,
6 you have to make certain assurances to investors
7 about the integrity of your systems. And some
8 of the things that I needed to do, some of the
9 money that I had gotten commitments on I could
10 not get commitments from some of the
11 shareholders who were existing shareholders to
12 go along with what they were demanding, and so I
13 basically recognized it was time to go back home
14 so to speak.

15 **Q. And so you went back to Business**
16 **Value Services?**

17 A. Business Valuation Services.

18 **Q. Valuation Services.**

19 **And at that point it had become CBIZ;**
20 **is that correct?**

21 A. No. No. It was still Business
22 Valuation Services when I returned.

23 **Q. Okay. And did you also serve as a**
24 **director of ErgoBilt, Inc.?**

25 A. Yes, I did.

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2 **Q. And what did ErgoBilt, Inc. do?**

3 A. They were primarily a manufacturer of
4 ergonomic chairs and ergonomic products. That
5 was their main subsidiary.

6 They also had, they owned a court
7 reporting product that they were trying to
8 develop which had some ergonomic applications,
9 and they were trying to develop it for not just
10 court reporting, but also so students that are
11 court reporting could use the device as an
12 all-in-one. It was a, the computer, instead of
13 having a separate stenograph and a computer,
14 you'd have them all integrated, and then in
15 addition, it used a more friendly system than
16 the traditional stenographic method.

17 Some of the schools had adopted the
18 method. It had originally been backed by EDS
19 and there was a dispute with EDS.

20 And so that was the other business
21 and I think they also acquired a court reporting
22 software company.

23 **Q. And were there accounting problems at**
24 **ErgoBilt when you were there?**

25 A. Well, they were -- they preceded my

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2 existence there. I was brought in to help clean
3 it up after the fact, but yes.

4 **Q. And in fact PwC resigned as their**
5 **auditor shortly after you joined; is that**
6 **correct?**

7 A. Yes.

8 **Q. And were they the subject of a suit**
9 **for securities violations?**

10 A. PwC was?

11 **Q. No, ErgoBilt.**

12 A. Oh, ErgoBilt was, yes.

13 **Q. Was that suit filed before or after**
14 **you came?**

15 A. Before.

16 In fact, I think the press release
17 that ended the class period was something I had
18 helped work on. Basically I put it out there to
19 make sure we weren't continuing the problem.

20 **Q. And was ErgoBilt a public company?**

21 A. It was, yes.

22 **Q. Did it get delisted from NASDAQ?**

23 A. Yes.

24 **Q. Was that during your time there?**

25 A. Yes.

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2 **Q. When did your affiliation with**
3 **ErgoBilt end?**

4 A. I believe about April of 1999, yeah.

5 **Q. And why did it end?**

6 A. I had come on board in July of '98.
7 There were a lot of bad apples. I was in charge
8 of overseeing reconstructive audit work, getting
9 the books and records in order.

10 I was also in charge of managing or
11 on the legal committee. That's a pretty hard
12 task, it's pretty demanding of time and the
13 principals that I was working with at Business
14 Valuation Services expressed a lot of concern
15 about the amount of time that I was spending
16 doing that.

17 I also became very increasingly
18 concerned that having made a lot of hard
19 decisions, I was not going to be effective going
20 forward and needed to eliminate my exposure.

21 **Q. And so you at this -- during this**
22 **time period that you were a director at**
23 **ErgoBilt, you were also working for Business**
24 **Valuation Services?**

25 A. That was the name, although the

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2 corporate entity had changed. In May of 1998,
3 Business Valuation Services was acquired by a
4 public company then known as Century Business
5 Services.

6 **Q. And that later became known as CBIZ;**
7 **is that correct?**

8 A. Yes.

9 **Q. And starting in 1998, what was your**
10 **day-to-day role at CBIZ?**

11 A. My formal title was still as a
12 principal. I still had some management
13 responsibilities but it had changed
14 dramatically. Rather than being a very small
15 what I would call phantom equity owner, I was
16 now working for a subsidiary of a public
17 company. So certain of the reporting,
18 decision-making process that I might have been
19 involved in the prior two or three years as a
20 principal of the firm I no longer was involved
21 in.

22 A lot of the work that I was doing in
23 that time period was what I would call working
24 with firms that were either in financial
25 distress, seeking financing or other kinds of

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2 transaction related work. I did a lot of
3 transaction work in this time period.

4 **Q. And when did you start doing**
5 **litigation consulting?**

6 A. I had done litigation consulting from
7 the beginning.

8 **Q. From '92.**

9 A. From '92 onward, yeah.

10 **Q. And over the last five years, what**
11 **percentage of your work would you say is**
12 **litigation consulting?**

13 A. Well, it's about 90 percent of my
14 time, but less, substantially less than that of
15 my engagements.

16 It has increased dramatically. It
17 probably five years ago was already at 75
18 percent and then has increased steadily each
19 year since then.

20 **Q. And what's the rough percentage of**
21 **the income that you derive, as a percentage,**
22 **what amount of the income would you say comes**
23 **from litigation consulting?**

24 A. Well, the income of the firm?

25 **Q. The income that you -- I'm sorry.**

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2 **What percentage of the income that**
3 **you generate for the firm would you say comes**
4 **from your litigation consulting?**

5 A. About 90 percent or in that -- maybe
6 85 percent, 80 percent, because a lot of the
7 non-litigation work I sell and I oversee but
8 gets leveraged or managed off to other people.
9 Litigation, I can't do that like I do my other
10 work.

11 **Q. And so for your litigation consulting**
12 **you have people who work for you or do you**
13 **actually give the work, you bring in the work**
14 **and give it to somebody else to run?**

15 A. No. Let's talk about non-litigation.
16 Non-litigation I have -- I might -- let's say I
17 have a client who wants me to do a transfer
18 pricing study for a pharmaceutical company,
19 okay? I'll sell that and probably 95 percent of
20 the time in the billings would be done by other
21 people in the office where I will set up the
22 meetings, initiate the work, make sure it's done
23 right, but I will do actually very little
24 substantive work.

25 In litigation, in contrast, you can't

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2 do that. I found that's a dangerous thing to
3 do.

4 So typically there as much as, you
5 know, sometimes as little as 10 percent but as
6 much as 20, 25, 30, 40, in some cases 50 or 100
7 percent of a litigation assignment will be my
8 personal billings.

9 I don't have a separate pool of
10 staff. We have about 19, 20 professionals in
11 our office who work on anything that comes in.
12 Two-thirds of our office's billings are
13 non-litigation so... But they're general staff.
14 They do whatever comes in the door.

15 **Q. And again over the last five years,**
16 **what percentage of your litigation consulting**
17 **would you say relates to securities class**
18 **actions?**

19 A. It has increased substantially. I
20 would say it was probably still 50 percent or
21 less five years ago.

22 It is now substantially greater than
23 that, but probably not more than 70 percent.

24 **Q. Okay. And of those securities class**
25 **action consulting projects that you work on,**

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what would you say would be the rough breakdown between doing work for plaintiffs in cases versus defendants in cases?

A. It's almost exclusively plaintiff now.

Probably once every two years I assist someone on the defendant side, primarily as a consulting expert. I think probably around '92, '93 I issued one expert report for a defendant, but so I would say probably, you know, of 100 engagements, 97, 96 are going to be plaintiff and the rest are defendant.

Q. And when were you retained in this case?

A. Boy, that's a good question. Probably sometime last year or earlier.

Q. And who retained you?

A. I think I was retained by Kaplan Fox.

Q. At that time do you remember what the purpose of the retention was?

A. Some preliminary analyses. You know, maybe market efficiency, maybe loss causation. I don't remember.

Q. With respect to AOL?

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A. Yes.

Q. And had you worked with Kaplan Fox & Kilsheimer before?

A. Yes.

Q. How many times?

A. At most a handful. Maybe three or four that I can think of.

Q. And what type of cases were those?

A. Well, one was not a class action securities case but, I think, but I think all but one was a class action securities.

Q. Did any of them involve analyst statements?

A. One did.

Q. Do you remember which case that was?

A. Yeah. It's Salomon Smith Barney/Citicorp is being sued for their -- for certain statements in analyst reports involving Metromedia Fiber Network or MFN.

Q. And what is your billing rate for the work that you do in this case?

A. \$525 an hour.

Q. And do you expect to receive any other compensation as a result of your work in

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this case?

A. No.

Well, first of all, that's compensation to the firm, that's not compensation to me.

Q. Okay. And have you actually been paid for any of your work in this case so far?

A. We've been paid on all work through our invoice issued in June.

We haven't issued an invoice for time in June yet.

Q. Any idea roughly about how much that is yet?

A. I don't think it's a large amount because we had -- I had done a draft report on this rebuttal to Stulz before that, so it's... I don't know, it might be a few thousand dollars.

Q. I mean total.

A. The newest invoice?

Q. I mean the total amount that you received in this case so far.

A. 35, 40,000 maybe. It's a rough guess. I don't know for sure.

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Q. About how much time do you think you've spent preparing the two reports that you did in this case?

A. Over 100 hours probably.

No, it can't be that much. Probably about 50 hours for me.

Q. And how many other people worked in preparing the reports?

A. I don't know. Probably two or three primarily and mostly in assistance and review.

Q. And those were people who worked in your office?

A. Yes.

Q. Any idea how much time they spent on preparing the reports?

A. Probably the same amount --

MR. HALL: Objection.

A. -- or greater in terms of time.

Q. And how does that time compare with, for example, the amount of time that was prepared -- that was spent preparing reports that you had done in Metromedia?

A. I spent more time on Metromedia because I issued a direct report in a damages

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2 report, so there was a lot more time reviewing
3 depositions and other things. I wouldn't be
4 surprised if my time in that case is over 100
5 hours, whereas this is probably at most maybe 40
6 to 60 hours of work at most on my part.
7 (Defendants' Exhibit Hakala 1,
8 Declaration of Scott D. Hakala Regarding
9 Market Efficiency, is marked for
10 identification, as of this date.)
11 BY MR. GESSER:
12 Q. Dr. Hakala, I'm showing you a
13 document marked Hakala Exhibit 1.
14 Do you recognize this document?
15 A. Yes.
16 Q. Can you tell me what this document
17 is?
18 A. This appears to be a copy of the
19 declaration and report on market efficiency that
20 I've prepared in this case.
21 Q. Do you stand by the analysis and
22 conclusions that were reached in this report?
23 A. Yes.
24 Q. Is there anything that you'd like to
25 change in this report?

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1 S. Hakala
2 Q. Do you recognize the document that's
3 marked Exhibit 2?
4 A. Yes.
5 Q. Can you tell me what that is?
6 A. It's a copy of a rebuttal report that
7 I prepared in this case.
8 Q. And is there anything you'd like to
9 change or modify or correct in this report?
10 A. Not that I can think of, no.
11 Q. So you stand by the analysis and
12 conclusions in the report?
13 A. Yes.
14 Q. And do you know if you drafted the
15 first draft of this report?
16 A. Yes. This was entirely written by
17 me.
18 Q. All right. If you turn to the last,
19 I guess it's the second to last page of Exhibit
20 2 --
21 A. Yes.
22 Q. -- it says that you declare under the
23 laws of the State of Texas, declare under
24 penalty of perjury under the laws of the State
25 of Texas.

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1 S. Hakala
2 A. Not that I can think of.
3 Q. Did you draft the first draft of this
4 report?
5 A. I think so. Yeah, everything in here
6 is my wording but some of the footnotes you'll
7 probably recognize from other reports, but it's
8 all mine.
9 Q. And when you say the footnotes I
10 might recognize from other reports, those are
11 other reports that you filed in other cases?
12 A. Yes. Yeah.
13 Q. So if the same issue arises in
14 different cases that you're consulting with, you
15 will take pieces from one report and drop it
16 into the other report to the extent that it's
17 applicable?
18 A. Yes.
19 Q. Okay. I'm showing you now --
20 MR. GESSER: We'll have to mark that
21 Exhibit 2.
22 (Defendants' Exhibit Hakala 2,
23 Rebuttal report of Dr. Hakala, is marked
24 for identification, as of this date.)
25 BY MR. GESSER:

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1 S. Hakala
2 Do you know why Texas was chosen? Is
3 that because that's where you live?
4 A. That's where I live.
5 Q. Okay. But the actual document was
6 executed in Philadelphia?
7 A. Yes.
8 Q. Is that because you were there at the
9 time?
10 A. Yes.
11 Q. Paragraph 7 of the report, this is on
12 page 5, if you look at the second sentence it
13 says, "Most of the reports issued by the
14 defendants were merely repeating or commenting
15 on AOL Time Warner news without significant
16 changes in opinion, such that stock price
17 effects would be viewed as unlikely."
18 A. Yes.
19 Q. Can you tell me what you mean by
20 that?
21 A. What I mean by that is that if an
22 analyst issues a report that does not
23 significantly alter their recommendation or
24 alters their forecasts or other comments that
25 are not different from what one would expect

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1 S. Hakala
2 from an analyst in that time period, they are
3 unlikely to cause a significant movement in the
4 stock price.

5 **Q. So for the analyst reports that are**
6 **at issue in this case, the CSFB reports on AOL,**
7 **do you know about how many of those reports you**
8 **would put into this category?**

9 A. Well, the vast majority of the
10 reports have material statements, meaning that
11 if the reports had said what is alleged in the
12 complaint and identified in emails, those
13 reports certainly would have caused a
14 significant effect on the stock price.

15 However, because they did not make
16 those statements, they omitted to make those
17 statements, most of the reports are merely
18 reiterating existing guidance or commenting on
19 events where they are merely reiterating the
20 same forecasts they might have made in another
21 report.

22 So many of the reports are like AOL
23 announces they have achieved 28 million
24 subscribers and then they re-insert in the
25 report that they expect AOL to make EBITDA

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1 S. Hakala
2 targets of 10.9 billion and, you know, continue
3 to see, you know, whatever, but they're
4 repeating the same thing that's in a prior
5 report is what I mean.

6 **Q. Okay. And so my question to you was,**
7 **how many of the reports fall into this category?**

8 MR. HALL: Objection.

9 A. I didn't do an add up.

10 We could do that if you had a list of
11 all the reports and we could segregate them.

12 I would say the majority of the
13 reports would probably fall into the category of
14 merely commenting on the news without making an
15 affirmative statement on the part of AOL -- of
16 CSFB about AOL.

17 **Q. But so there are some reports in your**
18 **view that do not fall into this category where**
19 **new news was being disclosed to the market from**
20 **CSFB; is that correct?**

21 A. No. I don't think that it was new
22 news, although the July 19th and the September
23 18 or 19, the reports around those two time
24 periods, that was clearly new news by CSFB.

25 **Q. July 19th of --**

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2 A. '01 and September 18 or 19 of '01.

3 **Q. Okay. We'll get to those in a**
4 **moment.**

5 **But can you think of any other**
6 **reports that in your view were more than merely**
7 **a reiteration of either a previous report by**
8 **CSFB or a statement to the market by AOL?**

9 A. I think there were probably about 8
10 or 10 reports that were beyond a reiteration
11 where they made some affirmative comment about
12 whether the guidance of AOL was achievable or
13 some other statement which would be material to
14 investors in the sense that it's telling them
15 something about the risk and prospects for AOL
16 Time Warner.

17 A number of the statements that were
18 what I would call new were issued in like the
19 first six months of 2001, and I remember there
20 being about a handful of reports that were not
21 just a comment on what AOL is saying and then
22 just a repeat of what's in a prior report in
23 both sum and substance, but making some
24 additional affirmative or negative comment.

25 **Q. Okay. And can you tell me which days**

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2 **those -- on which days those reports were issued**
3 **that in your view had an impact on AOL's stock**
4 **price?**

5 MR. HALL: Objection.

6 A. Well, I would tell you that all of
7 the reports had an impact on AOL's stock price,
8 and what I mean by impact is a report that does
9 not change earnings expectations impacts the
10 stock price because when you're doing the
11 consensus estimates and you're looking at
12 trends, the fact that an analyst is retaining or
13 maintaining their current earnings targets,
14 their current price target and other metrics and
15 revenue forecasts shows up on the boards so to
16 speak.

17 So if I'm looking at momentum, let's
18 say there's 20 analysts covering a stock, I want
19 to see what analysts let's say in the last week,
20 the last four weeks, the last two months have
21 reduced earnings guidance, reduced revenues
22 guidance, reduced EBITDA guidance, have lowered
23 their recommendation or raised their
24 recommendation. I want to see trends.

25 So all of these are having an impact

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2 in the sense that they are not signaling a
3 change in expectations for AOL Time Warner when
4 my understanding is the pleadings are that they
5 would have done so had the truth been disclosed.

6 Q. All right. Let's leave aside --
7 let's leave aside what wasn't said in the
8 reports for in a moment and dealing with the
9 effect of what was said in the reports on AOL
10 stock price.

11 A. Yes.

12 Q. Now you had said that if I'm --
13 correct me if I'm wrong. You said that because
14 these CSFB reports were part of the consensus of
15 analysts --

16 A. Yes.

17 Q. -- that they would have an effect on
18 the stock price.

19 A. Right.

20 Q. Okay. Did you analyze the CSFB
21 reports against the consensus to see how the
22 CSFB reports compared to the analyst consensus?

23 A. Not formally, but I did look at all
24 the analyst reports that we had at various time
25 periods, especially in the first and second half

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2 of '01, and lined up where CSFB was in terms of
3 price target, in terms of downgrades and so on
4 against them, but I did not do a formal study of
5 that.

6 Q. So you wouldn't know, for example,
7 what would happen to the consensus if the CSFB
8 reports had been removed from the consensus
9 forecasts.

10 A. No.

11 Q. So you wouldn't know whether the
12 consensus forecasts would have been affected at
13 all.

14 MR. HALL: Objection.

15 A. Up or down -- well, they would have
16 been affected but I don't know how much.

17 If you're talking about the consensus
18 earnings or revenue or EBITDA or growth
19 forecasts, I don't know. I think it would have
20 gone down slightly because there were some more
21 pessimistic reports out there, but probably not
22 a lot.

23 Q. And were there times during the class
24 period where the CSFB forecasts were below the
25 consensus?

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2 A. I don't remember that.

3 I think Stulz mentioned in his report
4 that there may have been, but that may not have
5 been my understanding of the consensus.

6 I mean there's multiple consensus
7 depending on if you include buy-side analysts,
8 if you include other analysts.

9 Q. Any idea how many analysts were
10 covering AOL at this time that would have been
11 part of those various consensus?

12 A. Various consensus reports I saw were
13 in the high teens to the mid 20s, maybe even as
14 high as 30 in some.

15 Q. And --

16 A. Now that's the broad consensus.

17 There was what I would call a core
18 consensus of sell-side analysts who are viewed
19 as top tier and I think it was, CSFB was
20 probably one of five or six of what I would call
21 the core top tier, meaning they were most
22 frequent and most active in covering and viewed
23 as having a closer relationship and more direct
24 knowledge of AOL Time Warner than most analysts.

25 Q. And where do you get that from?

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2 A. I get that from just reviewing the
3 frequency of the CSFB analyst reports relative
4 to the other analyst reports, some of the
5 perceptions out there in terms of just looking
6 at who's publishing when, how many.

7 Q. But was there an actual core
8 consensus number that was released to the market
9 or --

10 A. No. I'm talking about if you read
11 the reports, which reports appear to be analysts
12 issuing more than just a bare bones report,
13 making very strong qualitative comments about
14 quality of earnings, achievability of forecasts;
15 analysts who might be perceived by investors as
16 having some access to AOL or having superior
17 knowledge rather than just somebody like an
18 investment survey who just listens to conference
19 calls and, you know, once every three months
20 says I think it's a buy or a sell or whatever.

21 Q. But there's also something called an
22 analyst consensus, an actual number that gets,
23 you know, reported in the press as being the
24 consensus forecast for a company.

25 A. There are actually multiple ones.

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1 S. Hakala

2 **Q. Okay.**

3 A. The most common one I think you're
4 probably referring to is the First Call
5 consensus.

6 **Q. And just to be clear, you haven't**
7 **done an analysis to determine what would have**
8 **happened to that First Call consensus had CSFB's**
9 **reports been removed from the consensus**
10 **forecasts.**

11 A. No.

12 **Q. All right. So --**

13 A. Not that issue.

14 **Q. And the second -- turning back to**
15 **whether the CSFB reports had an effect on AOL**
16 **stock price, let's leave aside the issue of what**
17 **would have happened had the reports disclosed**
18 **something that they didn't disclose, just the**
19 **statements that are contained in the reports,**
20 **how would you determine whether they had an**
21 **impact on the stock price?**

22 MR. HALL: Objection.

23 A. It's very difficult to do. You might
24 look at trading and price movement directly
25 around the time of issuance of a report, but I

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2 mean it's difficult because all the tests for
3 impact are really what is the effect of the
4 report relative to what the effect would have
5 been in some alternative scenario and without
6 seeing the alternative scenario, you can't do
7 that properly.

8 **Q. But didn't you conduct an event study**
9 **for exactly that purpose?**

10 A. I did a daily event study and I did
11 not do an intraday event study and yes, I did it
12 not for that purpose so much as to show that the
13 information that was omitted was material and
14 that when analysts of similar weight in the
15 market did issue lowering guidance, did make
16 questioning statements --

17 **Q. But --**

18 A. -- they had the effect.

19 MR. HALL: Let him finish first.

20 MR. GESSER: He's not answer --

21 **Q. I said leaving aside the disclosure,**
22 **the issue of what wasn't disclosed, just talking**
23 **about what was disclosed --**

24 A. Yes.

25 **Q. -- there are --**

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2 MR. HALL: Objection.

3 **Q. -- there are days in which CSFB spoke**
4 **where there was no impact by your event study at**
5 **the 95 or 90 percent confidence level; is that**
6 **correct?**

7 MR. HALL: Objection.

8 A. No. You're confusing impact and
9 materiality with statistical significance in a
10 movement of the stock price.

11 The fact that the stock price did not
12 move significantly does not mean that that
13 report had no impact.

14 It may have had a small impact that
15 we can't distinguish from noise.

16 In some cases we have some pretty
17 strong indications that it had an impact at
18 least on two dates that are identified in my
19 report, but that impact was in conjunction with
20 at least a couple of analysts on July 19th and
21 with at least one other analyst in September of
22 '01.

23 We cannot say that the reports had no
24 impact. We cannot say that.

25 **Q. But can you say that the reports did**

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2 **have an impact?**

3 A. Yes.

4 **Q. And how are you able to distinguish**
5 **what was noise from what was the effect of other**
6 **analysts from what was the effect of CSFB?**

7 MR. HALL: Objection.

8 A. Again, you're confusing impact with
9 moving the stock price. That's not necessarily
10 impact in a true econometric or in a statistical
11 sense.

12 Statistics would say and materiality
13 would say the fact that, for example, CSFB in
14 the spring of '01 indicated that they thought
15 that the forecasts were achievable and that they
16 tended to discount or try to discount some of
17 the rumors that AOL Time Warner was going to
18 struggle, they had some impact.

19 Whether we can isolate it
20 statistically or not is another matter. They
21 had an impact.

22 **Q. How do you know that?**

23 A. Because they were qualitative
24 statements. Because if the statements had been
25 made alternatively that are the truthful

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1 S. Hakala
 2 statements, we know from other results that it
 3 would have had an impact. I mean --
 4 Q. You say you know that. I mean you,
 5 you, you suspect that.
 6 Your -- this is I mean -- you can't
 7 know what would happen had a statement that
 8 wasn't made been made.
 9 MR. HALL: Objection.
 10 A. No, you can by looking at what
 11 happens when somebody else or when the company
 12 makes that statement or when that truth leaks
 13 out.
 14 Q. And so if CSFB were to make a
 15 statement about AOL, you're saying that you
 16 can -- well, if CSFB -- withdrawn.
 17 If CSFB knew information, some
 18 information about AOL but didn't disclose it,
 19 and then AOL actually disclosed it and that
 20 affected the stock price, you're saying that you
 21 could then determine that CSFB, had it disclosed
 22 it, wouldn't have the same -- that statement by
 23 CSFB would have the same effect as if AOL
 24 disclosed it.
 25 A. You can look at the effect when AOL
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 2 discloses news versus when an analyst discloses
 3 news. I think you can or a jury can reasonably
 4 draw an inference that it would have had an
 5 effect.
 6 It may not have had the same effect
 7 as if AOL had disclosed it, but it would
 8 certainly have had an effect.
 9 There's no question it would have had
 10 an effect because lesser analysts when they
 11 issued questions similarly later in the class
 12 period had an effect.
 13 We also know that CSFB when it issued
 14 a report in September had some effect and we
 15 have an idea that CSFB as part of a small
 16 handful of analysts on July 19th, 2001 had an
 17 effect.
 18 Q. All right. Let's start with, because
 19 I think we're talking at cross purposes, let's
 20 start with what it is that affects stock prices,
 21 okay?
 22 A. Yes.
 23 Q. Because I think it would be helpful.
 24 AOL, you were involved in the In Re
 25 AOL class action; is that correct?
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1 S. Hakala
 2 A. Yes.
 3 Q. Okay. And you were retained by
 4 plaintiffs In Re AOL?
 5 A. Yes.
 6 Q. And what did you conclude about AOL's
 7 effect on its own stock price with respect to
 8 its alleged misstatements about its
 9 accounting --
 10 MR. HALL: Objection.
 11 Q. -- practices?
 12 MR. HALL: Objection.
 13 A. That they were material, that they
 14 caused a substantial inflation in the value of
 15 AOL and then later AOL Time Warner stock price,
 16 and that as the truth leaked out, and part of
 17 the leakage in my study was from analysts and
 18 for the earnings disappointments in 2001,
 19 actually the first one was in October of 2000,
 20 and then finally some partial admissions and
 21 then other disclosures in let's say July and
 22 August of 2001 the truth finally really came out
 23 to a large extent.
 24 Q. And so AOL, you concluded that AOL's
 25 alleged misstatements had caused a loss to AOL
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 2 shareholders?
 3 A. Yes.
 4 Q. And did you conclude that any other
 5 defendants in that case had caused a loss to AOL
 6 shareholders?
 7 A. Not specifically. I didn't isolate
 8 one defendant versus another. I never even got
 9 to that point.
 10 Q. But were you looking at other
 11 statements, statements by anyone other than AOL
 12 or AOL employees?
 13 A. Yes.
 14 Q. And did you conclude whether any of
 15 those defendants other than the AOL defendants
 16 caused a loss to AOL shareholders?
 17 MR. HALL: Objection.
 18 A. Well, in a contingent sense, yes.
 19 And some of them were not defendants.
 20 In other words, I found that certain
 21 analyst reports caused a loss, both in
 22 re-inflating the stock price based on
 23 reaffirming statements AOL was making and/or
 24 caused a loss in the sense that they revealed
 25 part of the relevant truth, and so some of the
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1 S. Hakala
2 key loss causation events were attributable to
3 analysts.
4 **Q. But if an analyst -- if AOL had made**
5 **a false statement to the market that**
6 **artificially inflated AOL's share price and an**
7 **analyst learned that information and revealed it**
8 **to the market as soon as it found out, that**
9 **analyst wouldn't be the cause of losses to AOL**
10 **shareholders, would it?**

11 MR. HALL: Objection.

12 A. I mean we can get into semantics, but
13 if I reveal truth to the market, I'm causing a
14 loss.

15 Now liability wise, they're not the
16 cause of that loss, AOL is ultimately the cause
17 of that loss, but there might be multiple causes
18 to that loss.

19 In other words, different defendants
20 may have acted and because one defendant didn't
21 disclose the truth doesn't absolve another
22 defendant from disclosing the truth as well.

23 **Q. And when --**

24 A. So there could be multiple people who
25 contributed to the inflation in the stock price

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1 S. Hakala
2 that ultimately caused the loss when the truth
3 was revealed.
4 **Q. But in the example that I gave you**
5 **where an analyst learns of AOL's false statement**
6 **and as soon as the analyst learns of the false**
7 **statement, that analyst discloses it to the**
8 **market, the cause as you describe from a**
9 **liability point of view is not the analyst**
10 **because the inflation that is being removed from**
11 **the stock price is inflation caused by AOL in**
12 **that circumstance, not by the analyst; is that**
13 **correct?**

14 MR. HALL: Objection.

15 A. In a liability sense and in the legal
16 sense, yes, but in a practical sense the analyst
17 is still causing the loss because he's leaking
18 the relevant truth.

19 Now he's not liable for it because he
20 has -- he's in effect doing a service. He's
21 just merely revealing the truth, he's not
22 previously hiding the truth which is what
23 ultimately causes the inflation.

24 So there's -- you're sort of using
25 words that have both a meaning in a legal

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1 S. Hakala
2 context and a meaning in an ordinary context.

3 **Q. Well, let me pick up on that, that I**
4 **think you just said the concealing causes**
5 **inflation, okay?**

6 A. Yes.

7 **Q. So I'm at a cocktail party and I**
8 **overhear two AOL executives saying that AOL**
9 **isn't going to meet its targets on an analyst,**
10 **okay?**

11 A. Yes.

12 **Q. I learn that and I don't disclose**
13 **that to anybody.**

14 **Am I inflating AOL stock price at**
15 **that point as an analyst?**

16 MR. HALL: Objection.

17 A. Implicitly yes. If you have a duty
18 to speak, if you've got a ratings out there and
19 you don't downgrade, yes.

20 **Q. Where does my duty to speak come from**
21 **in that circumstance?**

22 MR. HALL: Objection.

23 This is a legal -- I mean you're
24 talking about in a legal sense?

25 MR. GESSER: He just said there's a

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1 S. Hakala
2 duty to speak so I'm asking him what that
3 duty to speak is.

4 A. Well, let's put it in a non-legal
5 that we're getting into the standards of
6 professional practice of the AIMR at that point,
7 now the CFA institute.

8 If you as an analyst come upon that
9 kind of information, you have an affirmative
10 duty to pull your reports and withdraw your
11 recommendations at that point.

12 Now you cannot disclose the news but
13 you do have an affirmative duty to pull. You
14 can't continue to cover the company and you
15 certainly can't issue any reports until that
16 news is disclosed by the company.

17 And in fact if the company does not
18 come forthwith, you actually have an affirmative
19 duty, ethical duty at a minimum to disclose that
20 to the public, to your clients as well as to the
21 public in general.

22 **Q. Okay. Let's start from a simpler**
23 **hypothetical because I think my question to you**
24 **is from an economic point of view, at what point**
25 **does somebody who has knowledge start inflating**

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2 a stock price.

3 So I don't cover -- I'm an analyst.

4 I don't cover AOL, okay? I'm an analyst. I'm
5 at a cocktail party. I don't cover AOL. I
6 overhear two AOL executives saying that AOL
7 isn't going to meet its financial targets in a
8 month from now.

9 A. Okay.

10 Q. At that point, am I as the analyst
11 causing an inflation in AOL stock price?

12 MR. HALL: Objection.

13 A. In the abstract of to the extent that
14 you're aware of news that if revealed would have
15 caused the stock to fall, yes.

16 In a liability sense, probably no in
17 that scenario as I understand it.

18 Q. So you're saying from an economic
19 point of view, anybody who knows information
20 about a company that if disclosed would cause
21 its stock to fall is, by not disclosing that
22 information, inflating the stock price.

23 A. Yes. If information is inside,
24 non-public and material information and it is
25 adverse to the company, then that is inflating

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2 the stock price, and anyone who is party to that
3 information is party to the inflation.

4 Now --

5 Q. Even --

6 A. -- that's a different issue from what
7 your legal obligations might be and where
8 liabilities lines may be drawn, which is a legal
9 issue I don't draw on.

10 But even in that scenario, if my firm
11 is covering that company, let's say I'm an
12 analyst and I don't have coverage responsibility
13 but my firm does, there's still an ethical
14 question of whether or not my firm can continue
15 to cover.

16 Q. Suppose I'm not even an analyst.
17 Suppose I'm me. I'm a lawyer, I work at a law
18 firm and I overhear two AOL executives talking
19 at a cocktail party saying that they won't meet
20 their numbers in a month.

21 A. So now you know that the stock is
22 inflated.

23 Q. I know -- all I know -- I don't --
24 all I know is what I've heard. I've heard that
25 two AOL executives think they're not going to

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2 make their numbers.

3 A. And you think that's credible, then
4 you're aware that there's inflation in the stock
5 price.

6 Q. And I'm part of the cause of the
7 inflation.

8 MR. HALL: Objection.

9 A. Yeah, if -- but you may not be liable
10 for it and you may not be required to act to
11 remove it but you're part of the cause.

12 Once you're party to or knowledgeable
13 about something that's material and inside to a
14 corporation, you're part of it.

15 And in fact there's a whole
16 discussion about when you, when you come upon
17 these settings as a CFA, what duties and
18 responsibilities you have to the party that has
19 that knowledge of encouraging them to come forth
20 and be forthright and what your duties and
21 responsibilities are.

22 And I don't purport to be a legal or
23 an ethical expert beyond a CFA, but it's not as
24 simple as you would make it out to be.

25 Now as I would say that if I'm just

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2 some regular guy or an attorney and I come upon
3 this information, if I'm an attorney for the
4 company, I may not have a duty to disclose
5 because I'm not known as a speaker about the
6 company, I don't have a duty to go post it on
7 the Internet but so I may not be legally liable,
8 but nevertheless I might even then have an
9 obligation to go to the proper people and say
10 look, you know, you're in possession of this
11 information, you should be aware of it.

12 Q. But I'm asking --

13 A. You need to disclose it.

14 Q. I'm asking you from an economics
15 point of view, you're asked to determine whether
16 statements had an impact on AOL's stock price
17 and I think what you told me is some of these
18 statements or all of the statements had an
19 impact because they failed to disclose
20 something.

21 So I'm asking you from an economic
22 point of view, I'm the lawyer who overhears at a
23 cocktail party that two AOL executives are
24 saying they're not going -- AOL is not going to
25 make their numbers and I'm asking you from an

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1 **S. Hakala**
 2 **economic point of view, having heard that, am I**
 3 **now having an impact on the stock price by**
 4 **failing to disclose it?**

5 MR. HALL: Objection.

6 A. Well, first let me correct something
 7 because you mischaracterized my prior testimony.

8 You have an impact on the stock price
 9 even if you reiterate or reaffirm something,
 10 okay? Because relative to the alternative of
 11 what you could have said, that's an impact.

12 Now it may not have moved the stock
 13 but it's still an impact. It still enters the
 14 mix of information. It may not alter it, but it
 15 does enter the mix. And if you measure it
 16 against what the alternative would have been, it
 17 certainly has an impact against the alternative,
 18 which is the way we always think about in
 19 economics.

20 Second of all, in answer to your
 21 question, yes, you have an impact. You are now
 22 in possession of material inside information
 23 which is different from what the market knows.
 24 At that moment you are part of the cause of the
 25 inflation but you may not be liable for it and

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1 **S. Hakala**
 2 you may not have an obligation, but you do have
 3 and you are part of it.

4 You know, in the broader sense if you
 5 knew that there was insider trading or fraud
 6 going on, you might have an affirmative duty to
 7 disclose it to the SEC. So even if you were
 8 just Joe Schmoe on the street and you heard two
 9 guys talking about this on the street, if it was
 10 credible and you knew about responsibility, you
 11 might still have a duty to go and call a
 12 regulatory authority and say hey, I just heard
 13 this.

14 **Q. And from an economic point, Joe**
 15 **Schmoe on the street hears two AOL executives**
 16 **talking, you view that as being sufficient to**
 17 **create an impact on the stock price for that**
 18 **person who overheard it.**

19 MR. HALL: Objection.

20 A. Yes, because the individual at that
 21 moment has the ability within their action by
 22 making a statement or by taking an action that
 23 is within their purview of influencing that
 24 stock price.

25 **Q. Okay.**

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1 **S. Hakala**

2 A. They have the ability to influence
 3 the stock price.

4 **Q. Okay. So let's call that disclosure**
 5 **impact, okay? What we just discussed.**

6 A. Okay.

7 **Q. Leaving aside disclosure impact, all**
 8 **right, does your event study establish that any**
 9 **of the CSFB reports caused a statistically**
 10 **significant increase in AOL stock price?**

11 MR. HALL: Objection.

12 A. It is a reasonable hypothesis but it
 13 is not provable that by itself AOL Time Warner
 14 caused the increase in the stock price around
 15 September 18th and 19th by itself, but it would
 16 certainly --

17 **Q. You mean CSFB?**

18 A. Yes. When CSFB issued a report or
 19 commentary around September 18 and 19, that it
 20 was not the only speaker on that day but it was
 21 one of only two credible speakers on that day in
 22 that time period.

23 **Q. But that was a negative impact,**
 24 **right?**

25 A. No. No. No, no, no, no.

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1 **S. Hakala**

2 **Q. A positive?**

3 A. July 19th was negative. September
 4 18, 19 was positive.

5 **Q. Okay. And is that the only day that**
 6 **you can think of that your event study would**
 7 **show a statistically significant increase in AOL**
 8 **stock price as a result of a CSFB report?**

9 MR. HALL: Objection.

10 A. Where one could draw that inference,
 11 albeit that there is at least one other analyst
 12 that could explain at least part of that
 13 movement as well, yes.

14 **Q. So that's the only day.**

15 A. That's the only day where there's a
 16 positive impact based on a statement about AOL
 17 Time Warner by a CSFB analyst where it's
 18 identifiable.

19 **Q. You say September 18th or September**
 20 **19th.**

21 **Do you know which day that report was**
 22 **released on?**

23 A. I think that's the report we were
 24 having trouble locating so I don't know that I
 25 had the time stamp.

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1 S. Hakala
 2 I do know it got picked up.
 3 (Witness reviewing exhibit.)
 4 A. We have it on 9/18/01, but I'm not
 5 absolutely convinced it came out that day as
 6 opposed to it may have continued, because it was
 7 not a formal report, it may have continued to
 8 sort of filter into the market on the 19th and
 9 had an impact on the 19th. But at least for our
 10 event purposes, we have it on 9/18.
 11 (Defendants' Exhibit Hakala 3, Credit
 12 Suisse analyst report on AOL dated 9/19/01,
 13 is marked for identification, as of this
 14 date.)
 15 BY MR. GESSER:
 16 Q. I'm showing you a document marked
 17 Exhibit 3.
 18 Do you recognize this document?
 19 A. Yes.
 20 Q. Can you describe what it is?
 21 A. It is a morning meeting call on
 22 September 19.
 23 Q. Is a Credit Suisse analyst report on
 24 AOL?
 25 A. Yes.

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1 S. Hakala
 2 So yeah, we were struggling to find
 3 out when exactly this hit. We knew for sure it
 4 came in on the morning call on the 19th.
 5 We were not sure that this hadn't
 6 gone out in some fax or some pre-release to
 7 clients sometime on the 18th.
 8 Q. Okay. And reminding you of what you
 9 had said earlier about the AOL analyst
 10 statements, that "Most of the reports issued by
 11 the defendants were merely repeating or
 12 commenting on AOL Time Warner news without
 13 significant changes in the opinion, such that
 14 stock price effects would be viewed as
 15 unlikely," does this report fall into that
 16 category?
 17 MR. HALL: Objection.
 18 A. No.
 19 Q. Why not?
 20 A. Because this is saying that the
 21 concerns that the market has been raising
 22 recently that had been deflecting downward the
 23 price of AOL are already priced in the stock and
 24 therefore the stock is a buy, so this would
 25 either stop the price from declining.

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1 S. Hakala
 2 Q. And it's dated September 19th.
 3 A. Yes.
 4 Q. Is this the report that you referred
 5 to as being the one that in your event study may
 6 have an impact on --
 7 A. Yes.
 8 MR. HALL: Objection.
 9 A. Yes, although I don't know that this
 10 is the exact report or content. We picked it up
 11 on another source and I can't remember where,
 12 and I think we first saw it on the 18th, not the
 13 19th but I'm trying to remember where. It was a
 14 long time ago we picked it up actually.
 15 Which reminds me actually when I give
 16 an earlier answer when we were engaged, we
 17 actually did some very early work for the
 18 drafting of the complaint.
 19 MR. HALL: I'll stop you right there.
 20 I would like to caution you not to talk
 21 about any consulting work you may have done
 22 before you were retained for class
 23 certification purposes.
 24 A. I wasn't retained -- I was retained
 25 earlier by the counsel for other purposes.

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1 S. Hakala
 2 So let's say on September 18th,
 3 September 19th, the analyst either puts out the
 4 word to institutions before this call goes out
 5 or on the morning of this call puts out the word
 6 that they think that the stock is now
 7 undervalued or that these concerns are fully
 8 priced and they recommend a buy. That would
 9 stop the price from continuing to fall and may
 10 bring buyers back into the stock and move the
 11 stock back up. That's not uncommon.
 12 Q. And where do you see that?
 13 A. "Concerns about Entertainment Group
 14 Priced into AOL; Buy at Current Levels."
 15 Q. Where is that?
 16 A. Tag line, right here on the first
 17 page.
 18 And then they go on furthermore, "The
 19 rev mix is more favorable. For investors who
 20 need to be long something in this group, AOL has
 21 meaningfully outperformed the rest of the
 22 entertainment group on the downside. As an
 23 early turn play, it is worth owning at current
 24 levels, in our view."
 25 So they're saying if you want to get

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1 S. Hakala
2 in ahead of the turnaround in the stocks,
3 stock's been falling, we think it's going to
4 turn around and start going back up, you want to
5 get in early, get in now.

6 **Q. And you think this is materially**
7 **different than what CSFB had been saying in**
8 **other reports?**

9 A. It is not so much materially
10 different as materially different than what the
11 market understood in this time period and was
12 reflecting a change in sentiment relative to the
13 market that an analyst was making that had not
14 been made by other analysts, certainly not this
15 forcefully with the exception of a Bear Stearns
16 analyst sometime on the 19th.

17 (Defendants' Exhibit Hakala 4, Bear
18 Stearns report entitled "Top Fundamental
19 Pick in Our Universe", is marked for
20 identification, as of this date.)

21 (Witness reviewing exhibit.)

22 BY MR. GESSER:

23 **Q. I'm showing you Exhibit 4.**
24 **Do you recognize this?**

25 A. Yes.

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1 S. Hakala
2 break this down and do content analysis, I would
3 not necessarily put any less weight on the
4 Credit Suisse report than the Bear Stearns
5 report.

6 In other words, we have two reports
7 coming out by two different analysts around the
8 18th and 19th, both saying we think AOL is going
9 to turn around, AOL has less exposure to its --
10 than its peers to these advertising concerns, so
11 we think it's a top pick, you know, or we think
12 it's a good buy for a turnaround play. Which
13 one would have a greater impact I think we could
14 debate all day.

15 I'm just saying we've got two analyst
16 reports and the combination of those two is
17 clearly having a significant impact on the stock
18 price in this time period, and there's no other
19 news in this time period that I think is doing
20 it.

21 **Q. But as an economist, how could you**
22 **possibly conclude one way or the other whether**
23 **the impact that you measure on that day is**
24 **caused by the Bear Stearns report or the CSFB**
25 **report?**

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1 S. Hakala

2 **Q. Is this the Bear Stearns report that**
3 **you were referring to?**

4 A. Yes.

5 **Q. Can you read the title of the report?**

6 A. "Top Fundamental Pick in Our
7 Universe."

8 **Q. Okay. And if you read the first**
9 **sentence under "Key Points," "AOL Time Warner is**
10 **our top fundamental pick in this environment.**
11 **Out of all the entertainment companies we**
12 **follow, AOL Time Warner has the lowest exposure**
13 **to advertising."**

14 A. Yes.

15 **Q. Is that correct?**

16 A. Yes.

17 **Q. Would you view this as being equally**
18 **or more favorable than the report that was**
19 **issued on the same day by CSFB?**

20 MR. HALL: Objection.

21 A. It's really hard to say. I think
22 Bear Stearns had already had AOL Time Warner as
23 their top pick previously, so if you go down
24 below, they're reiterating previously.

25 But I would -- I mean if we sort of

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1 S. Hakala

2 MR. HALL: Objection.

3 Can you define what you mean by
4 impact?

5 **Q. Whatever the statistical significant**
6 **movement that you've discovered through your**
7 **event study.**

8 A. Well, you can't say which one is --

9 MR. HALL: Objection.

10 A. -- completely the cause and that's
11 with any event where there's two pieces of news
12 simultaneously and they both would tend to move
13 the stock in the same direction, you have to do
14 some kind of analytics outside of the event
15 study itself to determine which one was the
16 cause or both were the cause.

17 In this case it ultimately is an
18 opinion and a judgment and a judgment of fact
19 that could go to a jury, for example, of looking
20 at it and saying we do know there's two analysts
21 that spoke and when these two analysts spoke
22 over this two-day period, the stock went up a
23 lot.

24 So we can draw an inference that when
25 two analysts speak and speak contrary to market

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1 S. Hakala
2 beliefs and expectations and give more than just
3 a reiteration, that it does move the stock price
4 and CSFB was one of the two.
5 And to me that's enough. That's what
6 I'm supposed to do.
7 **Q. But there's no economic, recognized**
8 **economic analysis that would let you determine,**
9 **peer-reviewed economic analysis that would let**
10 **you determine whether either of these reports**
11 **individually caused an impact on the stock**
12 **price.**

13 MR. HALL: Objection.

14 Just one question. When you talk
15 about impact, are you talking about a
16 positive movement in the stock price?

17 MR. GESSER: I'm talking about a
18 statistically significant positive impact
19 on the stock price.

20 A. Well, economic --

21 MR. HALL: Objection.

22 A. Economically you can say that using
23 rational analysis of these two, they both with a
24 high degree of confidence contributed to the
25 movement, but you're right that there is no peer

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1 S. Hakala
2 literature suggests that it's very difficult to
3 tell which analyst is more or less important
4 from a statistical standpoint.
5 I think it is acknowledged that
6 certain types of analysts in certain cases using
7 event studies when they speak differently from
8 the market positively or negatively will seem to
9 move the stock more than others, but just saying
10 as an abstract matter because one analyst is
11 ranked third in a tier of their peer group in a
12 subindustry and another is ranked fourth that
13 one will have more influence than the other I
14 don't think follows.

15 In fact they're probably viewed
16 equally by the market.

17 **Q. And sitting here today, you can't**
18 **determine whether this report came out on the**
19 **18th or the 19th; is that correct?**

20 A. Well, I know this particular report
21 came out on the 19th.

22 What I'm saying is that we saw some
23 indicia or evidence that either the Bear Stearns
24 report or the Credit Suisse report, one or the
25 other or both, even though they are published on

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1 S. Hakala
2 reviewed way to deal with confounding events
3 period in the literature.

4 And that's always been a problem of
5 literature and that's why that's an issue of
6 fact and analysis that ultimately experts can
7 disagree on and juries can disagree on, but it's
8 still an issue.

9 It still establishes at this point
10 the two analysts issuing reports in this time
11 period significantly influenced the stock price
12 and that certainly shows impact to me.

13 **Q. Do you know how Raymond Lee Katz was**
14 **ranked as an analyst?**

15 A. I saw some ratings on him. I don't
16 think he was rated that highly but I don't want
17 to speak until I look.

18 And also I tend to take those ratings
19 with a grain of salt. Just because somebody
20 gets a higher rating in one poll versus another
21 doesn't necessarily mean he has more pull or
22 more weight.

23 **Q. Does the academic literature agree**
24 **with your analysis?**

25 A. Yeah. I think the academic

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1 S. Hakala
2 the 19th began to come out in some form or
3 fashion sometime on the 18th. That's not
4 uncommon.

5 **Q. And did you find a statistically**
6 **significant movement of the stock price on the**
7 **18th?**

8 A. Yes.

9 **Q. At what confidence level?**

10 A. If we hypothesize a positive
11 direction, then it would be at the 95 percent
12 confidence interval.

13 If we use a two-tail test, it would
14 be at the 90 percent level.

15 **Q. So can you explain to me the**
16 **difference between those two tests?**

17 A. Yes. One test says this is good
18 news, a priori this should move the stock up. I
19 want to see if in fact it moved the stock up.
20 That's a one-tail test.

21 If I look at this and say this is
22 news, this is an analyst report I want to see if
23 it had any effect at all positive or negative,
24 that's a two-tail test.

25 **Q. And so the two-tail test had**

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1 **S. Hakala**
2 **confidence at what level?**
3 A. 90 percent and the one tail at 95
4 percent, which for this purposes would be
5 considered statistically significant, although
6 standard nomenclature we would say that a
7 t-mat statistic of 1.65 is weakly
8 significant. Weakly means it's statistically
9 significant but it's just barely so.
10 **Q. And if the CSFB report did come out**
11 **on the 18th, would you still expect it to have**
12 **an impact on the stock price the next day?**
13 A. Yes because it would have come out
14 late on the 18th as I understood it and the
15 morning call would have reiterated and that
16 would have been the primary impact.
17 In other words, we saw the 18th as a
18 leakage event. We didn't see the 18th as the
19 primary event.
20 This report originally we said put it
21 on the 18th because that's when we thought it
22 first hit the market.
23 When I saw this report, actually I
24 saw it more recently, we were pretty convinced
25 it was sort of a two-day window for CSFB.

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1 **S. Hakala**
2 **Q. Do you know if any of the estimates**
3 **that appear in the September 19th, 2001 report**
4 **for CSFB were changed from previous reports?**
5 MR. HALL: Objection.
6 A. I don't remember. If they were
7 changed, they had really been signaled in a
8 change in July 19th.
9 I viewed this as a report speaking to
10 a market that was concerned and had been, quote,
11 unquote, hitting the stock price and saying we
12 don't think it's that bad, buy at these levels
13 because we think the stock's going to recover.
14 So I didn't look so much at the
15 rating as the content of what was being said and
16 how investors interpreted it.
17 **Q. You viewed as what is being said as**
18 **being different from what other analysts were**
19 **saying other than Bear Stearns.**
20 MR. HALL: Objection.
21 A. Other analysts in this time period
22 and/or the market in general.
23 In other words, they're speaking in a
24 time where the market, there's not as much
25 analyst commentary because they're sort of in an

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1 **S. Hakala**
2 **Q. And when you say "late on the 18th,"**
3 **do you mean after the close of the market or**
4 **before the close of the market?**
5 A. Before the trading stopped but at or
6 near the close or sometime in the afternoon.
7 I mean in my mind if it came out on
8 the 19th, that's not even a question that's
9 statistically significant so...
10 **Q. But the report, just to be clear, the**
11 **report on the 19th had a buy rating; is that**
12 **correct?**
13 A. Yeah.
14 **Q. That was consistent with previous**
15 **CSFB reports; is that right?**
16 A. As was Bear Stearns.
17 **Q. Okay.**
18 A. They both had buy ratings. They both
19 maintained a buy rating. They both reiterated a
20 buy rating.
21 **Q. I'm just asking you what was -- in**
22 **terms of the CSFB report, the buy rating was**
23 **same as previous reports and the price target**
24 **was the same; is that correct?**
25 A. I believe that's right.

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1 **S. Hakala**
2 interim period and they are now speaking against
3 concerns that had been leaking into the market,
4 and they are in the sense countering or
5 moderating those concerns. They're saying those
6 concerns are overdone or already priced in the
7 stock. We don't think the stock is going to go
8 down anymore, buy at current levels.
9 And that's different than just it's a
10 buy, it's -- this is a good time to buy because
11 you're getting in on the floor on a turnaround.
12 **Q. Did you do an intraday analysis on**
13 **either the 18th or 19th?**
14 A. No.
15 **Q. Why not?**
16 A. Well, I looked at overnight, but
17 other than overnight, no.
18 **Q. Why not?**
19 A. I don't generally have intraday trade
20 data and I did not have an exact timing for
21 these events.
22 MR. GESSER: I understand we're
23 almost done with the tape; is that correct?
24 THE VIDEOGRAPHER: You have five
25 minutes.

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1 S. Hakala

2 BY MR. GESSER:

3 **Q. Let's turn to the days in which there**
4 **were what you describe in your rebuttal report**
5 **as disclosures of the relevant truth.**

6 A. Okay.

7 **Q. All right?**

8 MR. HALL: Do you have a specific
9 section in the rebuttal report?

10 MR. GESSER: Paragraph 4 of the
11 rebuttal report.

12 BY MR. GESSER:

13 **Q. If I understand you correctly, you**
14 **conclude that the CSFB reports, all of them, had**
15 **an impact on AOL share price because they failed**
16 **to disclose certain facts that were known to the**
17 **AOL analysts at CSFB and you know that that had**
18 **an impact because when those facts were actually**
19 **disclosed, AOL stock price reacted negatively;**
20 **is that correct?**

21 MR. HALL: Objection.

22 A. Not entirely.

23 **Q. Okay. Why don't you characterize**
24 **that for me.**

25 A. We also know that the CSFB reports
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1 S. Hakala

2 I think April 18th of '01 is a good
3 example where the company makes a statement and
4 then CSFB makes a statement, and the increase in
5 the CSFB statement is modest at best, but the
6 content of what's being said has an impact.

7 If CSFB had said instead we think the
8 company is wrong, rather than the stock going up
9 a little bit more and reinforcing what the
10 company's already said, it would have gone down
11 a lot because it would have disputed what the
12 company is saying, so in my mind that's impact.

13 **Q. But in your mind that's impact for**
14 **what was not disclosed.**

15 MR. HALL: Objection.

16 A. It means it's beyond what was not
17 disclosed. You know, if I come out and I issue
18 an analyst report today and I give a buy rating
19 and say the price target is \$80 and then two
20 weeks later I come out and give a buy rating
21 again and say the price target is \$80, I'm
22 reiterating the same thing. And I wouldn't
23 expect it to cause the stock to go up a lot but
24 the fact that I'm reiterating and maintaining my
25 targets in the face may be of market evidence of

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1 S. Hakala

2 made certain statements about the quality of
3 earnings expectations that I believe had an
4 impact but it was small, not enough to be
5 measurable in terms of changing the mix of
6 information but clearly that is in my mind an
7 impact.

8 In other words, it's not just the
9 non-disclosure, it's the affirmative statement
10 in contrast with the non-disclosure that is the
11 impact.

12 If CSFB had said **we're neutral** or
13 **we're uncertain**, that would **have** had a big
14 impact in the other direction.

15 **Q. For those statements you described**
16 **them as being not measurable, how do you know**
17 **that they had an impact?**

18 MR. HALL: Objection.

19 A. Because we know that other analysts
20 when they made statements in times when no one
21 else was making statements had an impact.

22 We know that the nature of the
23 statement made, the type of statement made had
24 an impact significantly, albeit it was an impact
25 earlier in the day that the company made.

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1 S. Hakala

2 increasing concerns and a declining stock price
3 is impacting.

4 Whether the impact is a half of a
5 percent or one percent in the positive
6 direction, whether the impact is felt right away
7 or whether people read the report and think
8 about it for two or three days and the stock --
9 or whether the impact prevents the stock from
10 falling as much, it's still an impact.

11 It's not necessarily measurable
12 because it's not a statement where you're making
13 a significant change in isolation of any other
14 thing going on, but it's still having an impact.
15 You can't say it doesn't have an impact.

16 **Q. Well --**

17 A. In other words, the failure to find
18 it doesn't prove that it didn't have an impact.

19 **Q. But had CSFB not issued an analyst**
20 **report on April 18th, 2001, would AOL stock**
21 **price, in your view, be different?**

22 MR. HALL: Objection.

23 **Q. Had been different. Would AOL stock**
24 **price have been different?**

25 A. Yes, but not a lot different. Maybe

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1 S. Hakala
 2 half a percent, maybe a percent different by the
 3 end of the day.
 4 **Q. How would you know that? How would**
 5 **you measure that? Is that your opinion or is**
 6 **there any --**
 7 A. It's my opinion --
 8 **Q. Is there any economic accepted way to**
 9 **measure that?**
 10 A. No. No. Other than to show what
 11 happens when they later withdraw coverage or
 12 when they correct their statements or when
 13 another analyst does it, then we can see what
 14 the impact is.
 15 **Q. Then you're looking at what would**
 16 **have happened if an analyst would have withdrawn**
 17 **coverage.**
 18 I'm asking you if they simply did not
 19 --
 20 THE VIDEOGRAPHER: We have to change
 21 the tape.
 22 The time is 11:05. We are going off
 23 the record.
 24 (Recess is taken.)
 25 MR. GESSER: Marking as Exhibit 5.

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1 S. Hakala
 2 **Q. Okay. And what was the issue that**
 3 **resulted in that -- what was the issue in that**
 4 **case that resulted in you filing this affidavit?**
 5 A. Dr. Allan Kleidon of Cornerstone
 6 issued a declaration or affidavit claiming that
 7 there was no loss causation associated with the
 8 allegations in AOL Time Warner, so I and another
 9 expert, Dr. Laranches Meray, prepared affidavits
 10 in support of or that were relied on by
 11 plaintiffs in their response to that Motion for
 12 Summary Judgment.
 13 **Q. And in part of this submission did**
 14 **you prepare an event study?**
 15 A. Yes.
 16 **Q. And for that event study did you**
 17 **determine what were the material days during the**
 18 **class period?**
 19 A. Yes.
 20 **Q. And do you remember what the class**
 21 **period was in that case?**
 22 A. It was fairly long. It went from I
 23 think early 1999 through July 24th of 2002.
 24 **Q. And so the first stage of that event**
 25 **study you would identify material events; is**

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1 S. Hakala
 2 (Defendants' Exhibit Hakala 5,
 3 Affidavit, is marked for identification, as
 4 of this date.)
 5 THE VIDEOGRAPHER: This is the start
 6 of the tape labeled No. 2.
 7 The time is 11:20. We are back on
 8 the record.
 9 BY MR. GESSER:
 10 **Q. Dr. Hakala. I'm showing you a**
 11 **document marked Exhibit 5.**
 12 **Do you recognize this document?**
 13 A. Yes.
 14 **Q. Can you tell me what it is?**
 15 A. It is the affidavit with all the
 16 exhibits that was prepared in response to a
 17 Motion for Summary Judgment on loss causation in
 18 AOL Time Warner, the main securities litigation.
 19 **Q. The case against AOL.**
 20 A. Yes.
 21 **Q. And you prepared an expert report in**
 22 **that case?**
 23 A. Well, this is an affidavit, not
 24 technically an expert report but it's pretty
 25 close to the same thing.

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1 S. Hakala
 2 **that correct?**
 3 A. Yes.
 4 MR. HALL: Objection.
 5 **Q. And when you were looking for**
 6 **material events, what would those include?**
 7 A. They would include in this study, any
 8 significant upgrades, downgrades, changes in
 9 price targets or earnings forecasts of analysts,
 10 any news about AOL or Time Warner that would be
 11 considered more than ordinary about any new
 12 contracts, relationships, other things, any
 13 earnings announcement that was given by AOL Time
 14 Warner, any comments on earnings generally that
 15 we could identify by AOL Time Warner or its
 16 executives. Those were the primary news events
 17 that we would have looked into.
 18 Any news about any regulatory or
 19 actions by government agencies was another area.
 20 **Q. What was the purpose of identifying**
 21 **those days?**
 22 A. We wanted to isolate those dates as
 23 what I would call the relevant event dates
 24 specific to the allegations in the complaint
 25 and/or to control for days when potentially the

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1 S. Hakala
 2 news that came out could have impacted or
 3 altered the stock price in a significant manner
 4 and therefore needed to be controlled for.
 5 **Q. And when you say "the stock price,"**
 6 **you mean the stock price of AOL?**
 7 A. AOL Time Warner, yeah. AOL first and
 8 then AOL Time Warner later.
 9 **Q. Okay. And if you look on page 20 of**
 10 **that report.**
 11 A. Okay.
 12 **Q. Appendix A.**
 13 A. Yes.
 14 **Q. It's a discussion of the event study**
 15 **analysis.**
 16 A. Yes.
 17 **Q. And in paragraph 31 you discuss the**
 18 **days that were selected --**
 19 A. Yes.
 20 **Q. -- as material event days?**
 21 A. Yes.
 22 **Q. Do you see September 18th or**
 23 **September 19th, 2001 in your list of days?**
 24 A. No.
 25 **Q. Returning to April 18th, 2001, before**

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1 S. Hakala
 2 **the videotape changed I had asked you what would**
 3 **happen if the CSFB report on that day had not**
 4 **been issued, and I think you had said that you**
 5 **could conclude that it would be that the absence**
 6 **of the report would have had some small effect**
 7 **on AOL stock price?**
 8 A. Yes.
 9 MR. HALL: Objection.
 10 BY MR. GESSER:
 11 **Q. My question to you is how would you**
 12 **know that?**
 13 A. There's no way to test it but I
 14 always view analyst reports following a major
 15 statement by the company. Remember the company
 16 is reaffirming earnings guidance in the face of
 17 a slipping stock price where questions are made
 18 about earnings.
 19 When an analyst comes in in the sense
 20 after the conference call says we agree with
 21 management, that reiteration acts sort of like a
 22 booster shot.
 23 Now typically what happens or what
 24 can happen in some of these cases, management
 25 comes with a real bullish conference call and

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1 S. Hakala
 2 initially the reaction may be positive, then
 3 people may sit down at the end of the trading
 4 day or next morning and say you know, they may
 5 have been blowing a lot of smoke at us, maybe
 6 they're not all that cracked up and the stock
 7 might have fallen or slipped one or two percent
 8 at the end of day or the next day.
 9 But if a couple of analysts come out
 10 and credibly say, and especially with Martin, I
 11 think there's some evidence she had some
 12 credibility, we're reiterating and we think this
 13 is good news and we're reconfirming what
 14 management just said, we agree with it, they are
 15 in sense acting like a booster shot.
 16 It's kind of like if I have a flu
 17 shot and the first shot only protects me 50
 18 percent from the flu, and then I go out and I
 19 get another flu shot and that gives me 25
 20 percent protection and then another flu shot
 21 gives me another incremental 10 percent
 22 protection, each incremental flu shot short of
 23 protects me from the flu so the chances I'm
 24 going to get the flu are less and less and less.
 25 Analyst reports following a major

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1 S. Hakala
 2 statement by the company can in a sense maintain
 3 the stock price and prevent it from falling, can
 4 increase it further or can cause it to fall
 5 further or it could cause it to fall depending
 6 on the content and nature.
 7 **Q. Okay.**
 8 A. But in this particular case my sense
 9 was looking at it, and especially after the
 10 Stulz report, was that the report acted like a
 11 booster shot in the sense that it did have a
 12 small positive effect, but more likely prevented
 13 the stock from falling late in the day and
 14 overnight.
 15 **Q. How do you determine that it had a**
 16 **small positive effect?**
 17 A. Looking at the intraday.
 18 **Q. Looking at the intraday, you**
 19 **determined that following CSFB's analyst report**
 20 **that there was an increase in the AOL stock**
 21 **price? Is that what you're saying?**
 22 A. I don't remember, but what I do
 23 remember was that it may have either broken a
 24 trend or that my sense was that the stock might
 25 have fallen the following day or, I don't

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1 S. Hakala
2 remember exactly how or what I was looking at
3 there, but I had a specific reason why I felt
4 that that statement in that particular report,
5 while it didn't change the stock price by much,
6 certainly not by a significant amount, it did
7 act as a booster shot that may have prevented
8 the stock from falling further, and the silence
9 by CSFB following that announcement would have
10 in my opinion probably allowed a greater
11 decline.

12 In fact this is it. I'm looking at
13 my event study, Exhibit B, "4/19 Credit Lyonnais
14 lowers price target." And the price only falls
15 a little bit on the 19th of April, and I believe
16 one of the reasons why it failed was because the
17 CSFB report, which was kind of a unique report,
18 helped to neutralize the impact of the credit
19 report.

20 In other words --

21 Q. Did you say the CSFB report was a
22 unique report?

23 A. Yeah, that was my understanding.

24 Q. What do you mean by "a unique
25 report"?

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1 S. Hakala
2 A. Yeah.
3 Q. Is this the CSFB analyst report for
4 AOL Time Warner for April 18th, 2001?
5 A. Yes.
6 Q. The title is "AOL reports positive
7 surprise for March quarter results. No change
8 to guidance, but visibility remains low."

9 A. Yes.
10 Q. What do you take "visibility remains
11 low" to mean?

12 A. Meaning that there are risks to the
13 forecast because there are uncertainties in
14 coming periods.

15 Q. Okay. And what do you view as being
16 unique about this report as opposed to what
17 either AOL was saying or what other analysts
18 were saying on this day?

19 A. The stock is underowned as it is.
20 The risk/reward on any pullback looks
21 compelling, meaning that this report would in a
22 sense help staunch further declines in the stock
23 price and add sort of a support underneath the
24 stock.

25 Q. And you think that's more positive

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1 S. Hakala
2 A. It made some specific comments and
3 commentary that I thought -- and the timing was
4 I thought somewhat unique for that report.

5 Q. As opposed to the other reports that
6 were issued on that day?

7 A. As opposed to some of the other
8 reports, although it certainly wasn't alone.

9 Q. Do you know how many reports were
10 issued on that day?

11 A. No, not now. I did then.

12 Q. Okay. Can you tell me what it was
13 about the CSFB report on April 18th that you
14 remember to be unique?

15 MR. HALL: Objection.

16 A. Not without looking at it.

17 Q. Let's look at it.

18 (Defendants' Exhibit Hakala 6, CSFB
19 analyst report for AOL Time Warner for
20 4/18/01, is marked for identification, as
21 of this date.)

22 (Witness reviewing exhibit.)

23 BY MR. GESSER:

24 Q. You recognize this document marked
25 Exhibit 6?

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1 S. Hakala
2 than what any of the other analysts were saying?

3 A. Than some of the analysts. I don't
4 say all of the analysts. I certainly don't.

5 But I thought that the timing of this
6 report also came out at a little different time
7 than some of the others. Certainly this report
8 and a number of reports acted sort of to
9 reinforce and keep the Credit Lyonnais report
10 and some other negative reports on the 19th from
11 having a negative effect, from having a strong
12 negative effect.

13 Q. Is there any way to measure that?

14 A. No. No.

15 Q. There's no economically recognized
16 methodology that would allow you to reach that
17 conclusion.

18 A. Well, it's kind of like saying this:
19 Suppose somebody comes out and says something
20 that's positive and reinforcing and the stock
21 doesn't move, but suppose that if they had not
22 made that statement, the stock would have fallen
23 four percent. There's no way to test that until
24 you can look at what happens when they don't
25 make the statement later on or you can draw an

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